

SUMMONS

E-FILED 4/23/2020 1:31 PM
CC-02-2020-C-77
Berkeley County Circuit Clerk
Virginia Sine

IN THE CIRCUIT OF BERKELEY WEST VIRGINIA

Lewis F. Riley v. Thor Motor Coach, Inc

Service Type: Plaintiff - Certified Mail

NOTICE TO: Thor Motor Coach, Inc, 1209 Orange Street, Wilmington, DE 19801

THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS. YOU OR YOUR ATTORNEY ARE REQUIRED TO FILE THE ORIGINAL OF YOUR WRITTEN ANSWER, EITHER ADMITTING OR DENYING EACH ALLEGATION IN THE COMPLAINT WITH THE CLERK OF THIS COURT. A COPY OF YOUR ANSWER MUST BE MAILED OR HAND DELIVERED BY YOU OR YOUR ATTORNEY TO THE OPPOSING PARTY'S ATTORNEY:

John Ellem, PO Box 322, Parkersburg, WV 26102

THE ANSWER MUST BE MAILED WITHIN 20 DAYS AFTER THIS SUMMONS AND COMPLAINT WERE DELIVERED TO YOU OR A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT.

SERVICE:

4/23/2020 1:31:29 PM

Date

/s/ Virginia Sine

Clerk

RETURN ON SERVICE:

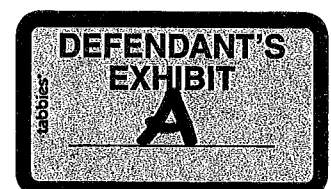
☐ Return receipt of certified mail received in this office on _____

☐ I certify that I personally delivered a copy of the Summons and Complaint to _____

☐ Not Found in Bailiwick

Date

Server's Signature



COVER SHEET

E-FILED | 3/13/2020 2:19 PM

CC-02-2020-C-77

Berkeley County Circuit Clerk
Virginia Sine

GENERAL INFORMATION

IN THE CIRCUIT COURT OF BERKELEY COUNTY WEST VIRGINIA

Lewis F. Riley v. Thor Motor Coach, Inc

First Plaintiff:

☐ Business

☒ Individual

☐ Government

☐ Other

First Defendant:

☒ Business

☐ Individual

☐ Government

☐ Other

Judge:

Michael Lorensen

COMPLAINT INFORMATION

Case Type: Civil

Complaint Type: Other

Origin:

☒ Initial Filing

☐ Appeal from Municipal Court

☐ Appeal from Magistrate Court

Jury Trial Requested:

☒ Yes ☐ No

Case will be ready for trial by: _____

Mediation Requested:

☒ Yes ☐ No

Substantial Hardship Requested:

☐ Yes ☒ No

☐ Do you or any of your clients or witnesses in this case require special accommodations due to a disability?

☐ Wheelchair accessible hearing room and other facilities

☐ Interpreter or other auxiliary aid for the hearing impaired

☐ Reader or other auxiliary aid for the visually impaired

☐ Spokesperson or other auxiliary aid for the speech impaired

☐ Other: _____

☐ I am proceeding without an attorney

☒ I have an attorney: John Ellem, PO Box 322, Parkersburg, WV 26102

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Berkeley County Circuit Clerk
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IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA

**LEWIS F. RILEY AND
DARLENE L. RILEY
(husband and wife)**

Plaintiffs,

vs.

CASE NO.: 20-C-_____

THOR MOTOR COACH, INC.

Defendant.

COMPLAINT

Now comes the Plaintiffs, **LEWIS F. RILEY AND DARLENE L. RILEY**, by counsel, John N. Ellem, and for their complaint against the Defendant states as follows:

I. FACTS COMMON TO ALL COUNTS

1. That the Plaintiffs, **LEWIS F. RILEY AND DARLENE L. RILEY**, are residents of Berkeley County, West Virginia, with an address of 1185 Butts Mill Road, Hedgesville, WV 25427.

2. That the Defendant Thor Motor Coach, Inc. (hereinafter sometimes referred to as "Thor") is a Delaware Domestic Corporation doing business throughout the United States, including West Virginia.

3. That the Defendant, Thor is engaged in the business of manufacturing and distributing various types of recreational vehicles (RV), which it then sells to the public through various independently owned dealerships located throughout the United States, including West Virginia. Thor's brands include Four Winds, Magnitude, Gemini and many others.

4. That on or about February 11, 2017, the Plaintiffs purchased a 2017 Thor Four Winds 24F RV Vin #1FDXE4FS4HDC20502 from Beckley's Camping Center in Thurmont, Maryland, for approximately Eighty-six Thousand Seven Hundred Dollars (\$86,700.00). The Plaintiffs purchased said

RV in the capacity of a consumer to use for consumer purposes - in particular family recreational pursuits. A copy of the Purchase Agreement is attached as Exhibit "A".

5. That said RV was manufactured and distributed by the Defendant Thor.

6. That the Defendant Thor has warranted said RV to be free from defects in materials and workmanship for a period of one (1) year from the date of purchase by the first retail owner.

7. That shortly after they purchased the RV the Plaintiffs experienced repeated problems with the quality of materials and/or workmanship of the RV. These defects resulted in repair attempts to the RV for a multitude of items, with many repeat repairs, on at least ten (10) separate occasions.

8. That as a direct and proximate result of the defects in the RV due to the Defendant Thor's poor workmanship and craftsmanship, the Plaintiffs were required to take their RV to be serviced at Beckley's Camping Center on numerous occasions and have had it taken back to Thor in Elkhart, Indiana for repairs as well as Wayne's Outdoor Express RV in Falling Waters, WV and Gander Outdoors in Winchester, VA and Camping World RV Sales in Hanover, PA. The Plaintiffs were without the use and benefit of their RV for a long period of time during their first year of ownership. Furthermore, the Plaintiffs provided the Defendant, Thor with written notice of these defects in a letter dated October 15, 2019 and an opportunity to repair the same. A copy of the letter is attached as Exhibit "B".

9. That as a direct and proximate result of the defects in the RV due to the Defendant Thor's poor workmanship and craftsmanship, the Plaintiffs have sustained substantial impairment to the use and/or market value of their RV, and further, various defects constitute and present a safety risk.

II. BREACH OF EXPRESS WARRANTY

10. The Plaintiffs repeat and re-allege each and every allegation contained in paragraphs 1 through 9 of Count I above, as if fully set forth herein.

11. That as a direct and proximate result of the defects in the RV, as aforesaid, due to the Defendant Thor's poor workmanship and craftsmanship, the Defendant Thor has breached its express warranties applicable to the RV.

12. That as a direct and proximate result of the Defendant Thor's actions, as aforesaid, the Plaintiffs have suffered loss of use and enjoyment of their RV, a risk of safety to the occupants, a complete and/or partial diminution in the value of their RV, as well as substantial annoyance, aggravation and inconvenience.

13. That the Plaintiffs repeatedly requested that the Defendant Thor and its authorized agents correct the defects in the RV as aforesaid. However, the Defendant Thor and said authorized agents were unable to repair said RV within a reasonable time so as to conform the RV to all applicable express warranties.

III. BREACH OF IMPLIED WARRANTY

14. The Plaintiffs repeat and re-allege each and every allegation contained in paragraphs 1 through 13 of Counts I and II above, as if fully set forth herein.

15. That as a direct and proximate result of the defects in the RV, as aforesaid, due to the Defendant Thor's poor workmanship and craftsmanship, and inability to make proper repairs, the Defendant Thor has breached any implied warranties applicable to the RV.

16. That as a direct and proximate result of the Defendant Thor's actions, as aforesaid, the Plaintiffs have suffered loss of use of their RV, a risk to the safety of the occupants, a complete and/or partial diminution in the value of their RV as well as substantial annoyance, aggravation and inconvenience.

SALES ORDER 39265

BECKLEY'S ENTERPRISES, INC. T/A
BECKLEY'S CAMPING CENTER
 11109 Angleberger Rd. 301-898-3300
 THURMONT, MD 21788-2502
 Fax: 301-898-7093

Date 02/08/17
 Home Phone 3047546713
 Work Phone
 Cell Phone

Buyer (221714) DARLENE LOUISE RILEY
 1185 BUTTS MILL ROAD
 HEDGESVILLE, WV 25427

SSN
 Birthdate 07/31/54
 License # [REDACTED]

Co-Buyer (47544) LEWIS FRANKLIN RILEY

SSN
 Birthdate 06/04/54
 License # [REDACTED]

Vehicle (35465) NEW 2017 THOR FOUR WINDS 24F VIN # 1FDXE4FS4HDC20502

**TRADE-IN VEHICLE INFORMATION**

(35735) 2014 THOR FOUR WINDS 23U
 Class C

TRADE-IN VALUE/CASH

Allowance on Trade	\$	51,000.00
Balance Owed on Trade	\$	45,060.34
Down Payment (Chargelpro Visa)	\$	500.00
Received 02/08/17		
Total Credits	\$	6,439.66

INSURANCE INFORMATION**SOLD VEHICLE INFORMATION****Factory Options:**

000. FOUR WINDS GRAPHICS
 04 INTERIOR- LAGUNA SLATE
 07 SYDNEY MAPLE CABINETRY
 08 ORANGE CRUSH- HD MAX
 15 3 BURNER HIGH OUTPUT RANGE TOP
 W/OVEN
 17 LEATHERETTE BOOTH DINETTE
 24 OUTSIDE SHOWER
 40 WHEEL LINERS
 41 BACKUP MONITOR
 42 LEATHERETTE DR/PS CHAIRS

Dealer-Installed Options:

DOWN DOWN PAYMENT NON REFUNDABLE
 PDI PRE DELIVERY INSPECTION NEW
 TITLE WE WILL HOLD THE VEHICLE TITLE FOR
 12 BUSINESS DAYS IN ORDER FOR FUNDS
 TO CLEAR OUR BANK
 VISA WE DO NOT ACCEPT CREDIT CARD
 TRANSACTIONS FOR OVER \$1000.00
 RELATING TO RV PURCHASES
 2316 BRAKE & WIRE W/CNTRLR MOTORHOME

I have read the matter on the back hereof and agree to it as part of this order the same as if it were printed above my signature. The front and back hereof comprise the entire agreement affecting this order and no other agreement or understanding of any nature concerning same has been made or entered into. I hereby acknowledge receipt of a copy of this order.

Darlene P. Riley
 Buyer's Signature

Lewis Riley
 Co-Buyer's Signature

Accepted By

Date

Tyler Staddon, Salesperson

EXHIBIT "A"

Vehicle Total	\$	85,000.00
WV Tax (5% of 34,000.00)	\$	1,700.00
DMV Tmp Tag-20 Title-15	\$	40.50
Xfer-5.50	\$	0.00
Recycling Tax	\$	4.80
Subtotal	\$	86,745.30
Credits (from left column)	\$	6,439.66
Balance	\$	80,305.64
Cash Due on Delivery	\$	2,305.64
Amount Financed	\$	78,000.00



JOHN N. ELLEM, ATTORNEY AT LAW
LICENSED IN WEST VIRGINIA AND OHIO

October 15, 2019

CERTIFIED MAIL

Thor Motor Coach
P.O. Box 1486
Elkhart, IN 46515-1486

Re: Darlene and Lewis Riley
2017 Thor Four Winds 24F
VIN #1FDXE4FS4HDC20502
Date of Purchase: February 08, 2017

Gentleperson:

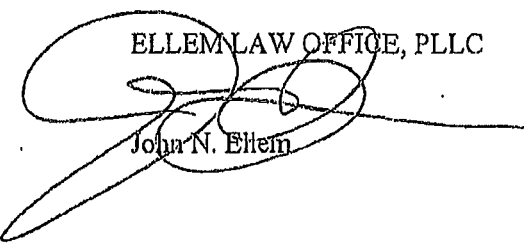
I am writing to you on behalf of my clients Darlene and Lewis Riley who are the owners of the above referenced Thor Four Winds. This RV was purchased from Beckley's Camping Center in Thurmont, Maryland on or about February 08, 2017. Unfortunately, since purchasing the RV, they have had numerous issues with the RV including, but not limited to, numerous cosmetic issues, several places that are not sealed properly, and different issues with different mechanical components of the RV. I have attached a copy of all the work orders in my clients' possession.

This letter is being provided to you pursuant to WV Code §46A-6A-5 as your prior written notification of the problems with the RV and opportunity to cure the defect as will as right to cure per WV Code §46A-6-106. Furthermore Mr. and Mrs. Riley are revoking their acceptance of this RV and demands their full purchase price be refunded to them. Please advise us of your position within 20 days of receiving this letter including any dates for your inspection/repair. We request that any inspection/repairs must be actually scheduled within 14 days of receiving this letter. If you wish to honor the revocation of acceptance, please let us know where you wish the RV to be delivered.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

ELLEMLAW OFFICE, PLLC



John N. Ellem

JNE: pl
Enclosures
Cc: Beckley's Camping Center
Cc: client (without enclosures)
File No. 1962

914 MARKET STREET • SUITE 207 • PO BOX 322 • PARKERSBURG, WV 26102-0322
PHONE (304) 424-LAWS (5297) • FAX (304) 865-1585
E-MAIL info@ellemlawoffice.com • WEB ellemlawoffice.com

EXHIBIT "B"

CIVIL CASE INFORMATION STATEMENT
CIVIL CASES
(Other than Domestic Relations)

E-FILED 5/13/2020 2:19 PM
CC-02-2020-C-77
Berkeley County Circuit Clerk
Virginia Sine

In the Circuit Court of BERKELEY, County, West Virginia

I. CASE STYLE:

Plaintiff(s)

Case # 20-C-

Judge

LEWIS F. RILEY AND DARLENE L. RILEY

1185 BUTTS MILL ROAD

HEDGESVILLE, WV 25427

VS:

Defendant(s)

Days to
Answer
30

Type of Service
Return to Ellem Law Office

THE CORPORATION TRUST COMPANY

CORPORATION TRUST CENTER

1209 ORANGE STREET

WILMINGTON DE 19801

PLAINTIFF: LEWIS F. RILEY AND DARLENE L. RILEY
 DEFENDANT: THOR MOTOR COACH, INC.

CASE NUMBER: 20-C-

II. TYPE OF CASE:

- | | |
|---|---|
| <input checked="" type="checkbox"/> General Civil | <input type="checkbox"/> Adoption |
| <input type="checkbox"/> Mass Litigation
(As defined in T.C.R. Rule XIX(c)) | <input type="checkbox"/> Administrative Agency Appeal |
| <input type="checkbox"/> Asbestos | <input type="checkbox"/> Civil Appeal from Magistrate Court |
| <input type="checkbox"/> Carpal Tunnel Syndrome | <input type="checkbox"/> Miscellaneous Civil Petition |
| <input type="checkbox"/> Diet Drugs | <input type="checkbox"/> Mental Hygiene |
| <input type="checkbox"/> Environmental | <input type="checkbox"/> Guardianship |
| <input type="checkbox"/> Industrial Hearing loss | <input type="checkbox"/> Medical Malpractice |
| <input type="checkbox"/> Silicone Implants | |
| <input type="checkbox"/> Other: _____ | |
|
 | |
| <input type="checkbox"/> Habeas Corpus/Other Extraordinary Writ
Other: _____ | |

III. JURY DEMAND:

☒

YES

☐

NO

CASE WILL BE READY FOR TRIAL BY (Month/Year): 03 / 2021

IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY OR AGE? ☐ YES ☒ NO

IF YES, PLEASE SPECIFY:

- ☐ Wheelchair accessible hearing room and other facilities
☐ Interpreter or other auxiliary aid for the hearing impaired
☐ Reader or other auxiliary aid for the visually impaired
☐ Spokesperson or other auxiliary aid for the speech impaired
☐ Other: _____

Attorney Name: John N. Ellem

Firm: ELLEM LAW OFFICE, PLLC

Representing:

☒ Plaintiffs

☐ Defendant

Address: 914 Market Street, Suite 207

Mail to: P.O. Box 322

Parkersburg, WV 26102-0322

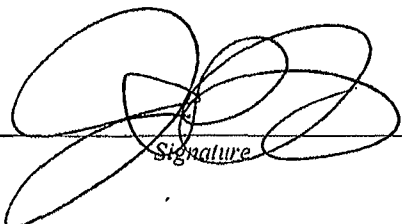
☐ Cross-Complainant

☐ Cross-Defendant

Telephone: (304) 424-5297

Facsimile: (304) 865-1585

Dated: March 13, 2020


 Signature

WEST VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF BERKELEY

LEWIS F. RILEY & DARLENE L. RILEY,

Plaintiff,

v.

Case No. CC-02-2020-C-77

THOR MOTOR COACH, INC.,

Defendant.

NOTICE OF FILING REMOVAL

PLEASE TAKE NOTICE that Defendant Thor Motor Coach, Inc., by counsel, filed with the United States District Court for the Northern District of West Virginia, Martinsburg Division, a Notice of Removal of this case to said United States District Court. A copy of that Notice is attached hereto as Ex. A. Pursuant to 28 U.S.C. § 1446(d), no further action should be taken in state court unless and until the action is remanded.

THOR MOTOR COACH, INC.

By Counsel

/s/ Clinton W. Verity
Clinton W. Verity (WVSB No. 13074)
Harman, Claytor, Corrigan & Wellman
P.O. Box 70280
Richmond, Virginia 23255
804-747-5200 - Phone
804-747-6085 - Fax
dgiroux@hccw.com
cverity@hccw.com

CERTIFICATE

I hereby certify that a true copy of the foregoing was emailed and mailed this 15th day of May, 2020 to:

John N. Ellem, Esq.
Ellem Law Office, PLLC
P.O. Box 322
Parkersburg, WV 26102-0322
304-424-5297 - Phone
304-865-1585 - Fax
john@ellemlawoffice.com

/s/ Clinton W. Verity
Counsel